DHA-15 (R10/97)

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MRA-30/47016

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2000, under Wis. Stat. § 49.455(8)(a)5. (1997-98) and Wis. Admin. Code § HFS 103.075(8)(a)5 regarding an MA denial made under the spousal impoverishment rules of the Medical Assistance (MA) program, a hearing was held on January 17, 2001 in Kenosha, Wisconsin.

The issue for determination is whether the county agency correctly denied petitioner's institutional MA application under the spousal impoverishment rules of the MA program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioners:

[redacted]

Represented by:

[redacted]

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street
Room 250
P.O. Box 309
Madison, Wisconsin 53707-0309

BY: Mary King, ESS
KENOSHA COUNTY HUMAN SERVICES DEPT
8600 SHERIDAN ROAD
KENOSHA WI 53140

Gary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN [redacted], CARES # [redacted] has been a resident of the Brookside Care Center (nursing home) in Kenosha County since October 10, 2000. The petitioner is married to [redacted] who resides in the community.

2. On or about November 16, 2000, the petitioner's wife, applied on behalf of petitioner for institutional MA under the spousal impoverishment program. See Exhibit 2.

3. Petitioner has Social Security income of $1,235 per month. Petitioner also receives a monthly pension from Chrysler of $395.50 for total income of $1,630.50

4. The community spouse has earned income of $421.87 per month and interest income of $171.56 per month. See Exhibit 2. Mrs. Petri's monthly income is $593.43.

5. The total monthly income for the couple is $2,223.93. See Exhibit 2.

6 The county agency completed an asset assessment for the couple as of the date of petitioner's admission in the nursing home – October, 2000. The total combined assets of the couple were $72,092.86. See Exhibits 1 and 2. The amount of assets allowed to be retained by the community spouse (community spouse asset share) was determined to be $50,000 as of petitioner's October, 2000 institutionalization. Petitioner is allowed to retain $2,000 in assets.

7. The county agency sent a November 21, 2000 Notice of Decision to the petitioner stating that petitioner's November 16, 2000 institutional MA application has been denied because the total countable assets of $72,092.86 was over the asset limit of $52,000 for the couple. See Exhibit 1

DISCUSSION

The issue in this case is the county agency's denial of the petitioner's MA application based on excess assets. Sec. 49.455, Wis. Stats., is the Wisconsin codification of 42 U.S.C. s. 1396r-5, known as MCCA. Petitioner seeks to have the hearing examiner reallocate resources under sec. 49.455(8)(d), Stats., to provide his community spouse the maximum monthly income allowed by sec. 49.455(4)(a)2.

Sec. 49.455(4)(a) provides that in determining the amount of the institutionalized spouse's income to be applied to the cost of care in the institution, the Department shall deduct:

1. The personal needs allowance under s. 49.45(7)(a).
2. The lesser of the community spouse monthly income allowance calculated under s. 49.455(4)(b), or the amount of income actually available to the community spouse, whichever is less.

In addition, the maximum income amount calculated under sec. 49.455(4)(b) in this case is currently $1,875, (plus excess shelter expenses above $562.50 per month, where applicable though not applicable in this case.) See also the MA Handbook, App. 23.4.1 and 23.6.0.

Under sec. 49.455(6)(b), the community spouse, in 2000, is allowed to keep assets up to $50,000 when the asset total is $100,000 or less. (This is added to the normal $2,000 asset limit.) See MA Handbook, App. 23.4.2. The agency took the $72,092.86 in nonexempt assets, subtracted the $52,000 MA asset limit, and determined that petitioners' assets were approximately $20,000 above the asset limit, and the petitioner was not eligible for MA.

However, under sec. 49.455(6)(b)3, resources can be reallocated to the community spouse at a fair hearing. Sub. (8)(d) provides as follows:

> If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Thus, the hearing officer can reallocate resources to generate the maximum income possible, even after the county agency has denied the applicant based on excess resources. However, any such asset reallocation presumes that the couple's income is below the minimum monthly maintenance needs allowance. Since the couple's total monthly income is $2,223.93, the couple already has monthly income above the minimum monthly maintenance needs allowance of $1,875. As a result, petitioner is not entitled to any asset reallocation. Because petitioner is not entitled to any asset reallocation, the petitioner and his wife remain over their spousal asset limit of $52,000. Accordingly, the county agency correctly denied petitioner's November 16, 2000 MA application.

As dicta, if at some point in the future, the couple's assets drop to $52,000 or their combined income drops below about $1,875, the petitioner may wish to reapply for institutional MA under the spousal impoverishment program.

CONCLUSIONS OF LAW

The county agency correctly denied petitioner's November 16, 2000 institutional MA application as the couple's total countable assets were above the asset limit.

NOW, THEREFORE, it is **ORDERED**

That the petition for review be and hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Madison, Wisconsin, this 29th day of January, 2001.

Gary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
1-26-2001gmw

xc: Kenosha County Department of Human Services
Susan Wood, DHFS